

2011
TOW SERVICE
AGREEMENT

Effective 1-1-11 through 6-30-11

SEPTEMBER 2010

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STATE OF CALIFORNIA
DEPARTMENT OF CALIFORNIA HIGHWAY PATROL
TOW SERVICE AGREEMENT
CHP 234 (09-2010) OPI 061

This Tow Service Agreement (TSA) contains terms and conditions that a company agrees to comply with in order to receive and maintain a rotation tow listing with the California Highway Patrol (CHP). Participation in the CHP Rotation Tow Program is voluntary. An operator, by agreeing to participate in the program, does not establish a contractual relationship with the CHP and is not acting as an agent for the CHP or the State of California when performing services under the TSA. Exceptions to compliance with the TSA, shall not be authorized by verbal agreement. Any exceptions shall be documented by the Area commander as a written addendum to the TSA.

1 TOW DISTRICTS

- A. The CHP Area commander shall establish tow districts for each class of tow truck to facilitate the distribution of calls and meet the needs of the CHP with regards to response time and availability of tow services.
- B. Within each tow district, the Area commander shall determine the maximum response time, reasonable rates, minimum number of trucks, and any applicable addendum.
 - 1) The Area commander may require more than one tow truck in each class in tow districts where rapid response for congestion relief is required.
- C. An operator shall have a business office and storage facility located within the district he/she serves, unless this requirement is waived by an addendum from the Area commander.
 - 1) The Area commander may establish a maximum radius for the location of a business office from which an operator may provide service for a tow district.
- D. An operator shall provide service in only one Area command unless waived by an addendum from both adjacent Area commanders and with the Division commander's concurrence.
- E. A secondary storage facility does not qualify an operator for an additional tow district.
- F. Within each tow district, the CHP should maintain separate rotation tow lists for each class of tow truck to ensure an equitable distribution of calls.

- G. Within each tow district, the CHP should maintain separate rotation tow lists for salvage and recovery operations involving large commercial vehicles (e.g., overturned, down an embankment), as determined by the Area commander.

2. ROTATION LISTS

- A. A call to an operator shall constitute one turn on the list and the operator shall be moved to the bottom of the list.
 - 1) This includes when the operator fails to answer the phone, is unable to respond, is unable to perform the required service, refuses to respond or provide service, or is canceled due to excessive response time.
- B. If it is determined the operator is not needed and is canceled by the CHP, up to and including arrival on scene and standby time which does not result in a tow, there shall be no charges and the operator shall be placed back at the top of the list.
- C. If the operator responds to a CHP call and is canceled by the vehicle's registered owner or agent, prior to the operator taking possession of the vehicle, there shall be no charge and the operator shall be placed back at the top of the list.
 - 1) Possession is deemed to arise when the vehicle is removed and is in transit, or when vehicle recovery operations or load salvage operations have begun (Section 3068.1[a] of the Civil Code[CC]).
- D. Nothing in the TSA shall prohibit an Area commander, supervisor or scene manager, from requesting a specific tow company when, in their opinion, the necessary resources to clear a hazard are not available from the tow company currently at the top of the rotation tow list.
 - 1) In such an instance, the selected company would then go to the bottom of the list and those tow companies which were by-passed, would remain in the same list order.
- E. Nothing shall prohibit a Class B, C, or D operator from maintaining a position on a lighter class rotation list, provided the tow truck meets the equipment specifications for that class of operation.
 - 1) Regardless of the class of tow truck utilized or responding to the call, charges shall not be more than for the class of vehicle towed or serviced, except when vehicle recovery operations require a larger class tow truck.

- F. A Salvage and Recovery Rotation Tow List should be established for each Area office. Depending upon an Area's needs, this list may be for each tow district or for the entire Area as determined by the Area commander.
- 1) This list should be utilized whenever a large commercial vehicle is overturned and/or down an embankment.
 - 2) This list **should not** be utilized for a large commercial vehicle which is upright and on all wheels.
- G. Those operators on the Salvage and Recovery Rotation Tow List shall respond with the following:
- 1) At least one (1) driver with five (5) verifiable years for-hire salvage and recovery experience.
 - 2) A minimum of two (2) tow trucks which shall be one (1) Class D tow truck and one (1) Class C tow truck.
 - 3) Depending on an Area's needs and a tow operator's equipment availability, the Area commander may allow an operator to respond one of the following to meet the minimum two (2) tow truck response criteria:
 - a) Two (2) Class C tow trucks.
 - b) The operator assigned the initial call may, subject to prior agreement with the Area commander, request a specific operator for assistance to meet the one (1) Class D tow truck and one (1) Class C tow truck or two (2) class C tow trucks.
 - c) One (1) Class C tow truck and one (1) Class B tow truck (e.g. remote Areas in the state where traffic congestion is not an issue).

3. TOW OPERATORS

- A. Operators applying for the rotation tow program shall have a minimum of three (3) verifiable years for-hire towing experience, as an owner or principal, prior to the final filing date of an enrollment period in order to qualify for a rotation tow listing.
- 1) The three (3) verifiable years for-hire experience shall be decided by the CHP.
- B. Operators and owners who do not meet the three (3) verifiable years for-hire towing experience, may be considered if a full-time manager is employed who

possesses three (3) verifiable years for-hire tow experience, as an owner, principal or full-time manager.

- 1) The three (3) verifiable years for-hire experience, as an owner, principal, or full-time manager shall be decided by the CHP.

C. Management experience shall be decided and qualified by the CHP as follows:

- 1) The designation of “manager” implies general power and permits reasonable inferences that the employee so designated is invested with the general conduct and control of his employer’s business.
- 2) An individual who has charge and control of a business and is vested with a certain amount of discretion and independent judgment.

D. If the manager ceases to be employed by the company, the TSA shall be terminated until a new manager is approved by the CHP.

E. Operators and owners applying for an additional identified business/terminal(s) located in a different tow district(s) or Area(s), shall utilize a full-time manager pursuant to Element 3. B.

F. Operators and tow truck drivers involved with the CHP rotation tow program shall be fingerprinted for the purpose of conducting criminal history inquiries.

- 1) Effective January 1, 2011, any new operator or tow truck driver shall be fingerprinted.
 - a) Any operator or tow truck driver cleared through the CHP from January 1, 2010, through December 31, 2010, shall be exempt from the fingerprinting requirement.
- 2) An operator shall notify the CHP of any arrest and/or conviction of a tow truck driver, or the operator, prior to the beginning of the next work shift.
- 3) Failure to make notification should be cause for disciplinary action.

G. Operators shall have all tow truck drivers involved with CHP rotation tow operations participate in a controlled substance and alcohol testing (CSAT) program.

- 1) Drivers requiring a Class A, Class B, or commercial Class C license (endorsed for hazardous materials transportation) shall participate in a CSAT program as defined in the Code of Federal Regulations, Title 49, Parts 40 and 382.

- 2) Those drivers that are not required to possess a Class A, Class B, or commercial Class C license shall be enrolled in a CSAT program substantially similar to the requirements as outlined in Section 1) above.
 - 3) The operator shall ensure selection pools for commercially and non-commercially licensed drivers are maintained separately. The operator shall provide proof records of their CSAT programs to the Area office during enrollment period.
 - 4) A driver possessing a non-commercial driver's license who returns with a positive test result shall meet the same reinstatement requirements as a driver required to possess a commercial driver's license.
- H. Operators shall have a Carrier Identification (CA) number and a valid Motor Carrier Property (MCP) permit. The MCP documentation shall be provided to the Area office during the enrollment period.
- 1) The expiration of an operator's MCP and/or suspension of the MCP, pursuant to Section 34623 California Vehicle Code (CVC), shall result in the immediate suspension of the tow operator, as well as additional disciplinary action which may be imposed by the Area commander.

4. TOW OPERATOR'S BUSINESS

- A. An operator's place of business shall have a sign which clearly identifies it to the public as a tow service.
- 1) The sign shall have letters which are clearly visible to the public from the street and shall be visible at night.
- B. Business hours shall be posted in plain view to the public.
- C. An operator's place of business shall be sufficiently staffed to allow customers to talk face-to-face with a tow company's owner, manager, or employee during normal business hours.
- 1) "Normal business hours" shall not be less than 8 a.m. to 5 p.m., Monday through Friday, except for the following state recognized holidays: New Year's Day, Martin Luther King Day, Labor Day, President's Day, Cesar Chavez Day, Memorial Day, Independence Day, Columbus Day, Veteran's Day, Thanksgiving Day, day after Thanksgiving Day, and Christmas Day (Section 22851[b] CVC).
- D. Offices staffed with only one employee may be closed for one hour at lunch.

- 1) A sign shall be posted which reflects a lunch closure and a phone number where a request by a vehicle's owner/agent shall result in an immediate response to release property or a vehicle.
 - 2) Response to the office shall be within the time frame required for a CHP Class A tow truck.
- E. The operator shall maintain records of all tow services furnished at the operator's primary office.
- 1) Invoices shall, at a minimum, include a description of each vehicle, nature of service, start time, end time, location of call, itemized costs of towing and storage, the tow truck driver's name, and truck used.
- F. The operator's primary business office shall also maintain business records relating to personnel, insurance, personnel taxes, payroll, applicable operating authorities, local operating authorities, lien sale actions, and Federal Communication Commission licensing (if applicable), and non-CHP tows.
- G. The CHP may inspect all operator records without notice during normal business hours.
- H. Operators shall permit the CHP to make copies of business records at their place of business, or to remove business records for the purpose of reproduction.
- 1) The CHP shall provide a receipt for any record removed from the place of business.
- I. Records shall be maintained and available for inspection for a period of two (2) years plus the current term of this TSA.
- 1) Failure of the operator to comply with the aforementioned inspection requirements shall be cause for disciplinary action.

5. FINANCIAL INTEREST

- A. No operator or applicant shall be directly involved in the towing-related business of any other operator or applicant within the same tow district.
- B. The sale or transfer of the controlling interest in a company shall immediately terminate the TSA. A new owner may apply for the rotation tow program at any time during the remainder of the current TSA term, regardless of the Area's enrollment period.
- C. No operator or applicant shall share equipment with any other operator or applicant involved with the CHP rotation tow (excluding equipment which may

be unavailable due to repairs, equipment replacement, or the operator is involved in the Salvage and Recovery List).

6. RESPONSE TO CALLS

- A. The operator shall respond to calls 24 hours a day, seven (7) days a week, within the maximum response time limits established by the Area commander.
- B. An appropriately licensed operator or tow truck driver shall respond with a properly equipped tow truck of the class required to tow the vehicle and be in possession of the appropriate class of license and applicable endorsements.
 - 1) Any applicable permits (e.g., load variance, oversize) shall be valid and maintained in the tow truck.
- C. The operator shall advise CHP dispatch, at the time of notification, if they are either unable to respond or unable to meet the maximum response time.
 - 1) If, after accepting the call, the operator is unable to respond or will be delayed in responding, the operator shall immediately notify the appropriate CHP communications center.
- D. A failure to respond to towing or service calls, and/or repeated failures to meet maximum response time requirements, shall result in disciplinary action.
- E. If service, other than towing, recovery, and load salvage, is canceled by the vehicle's registered owner or agent, no lien shall arise for the service unless the operator has presented a written statement to the vehicle's registered owner or agent for the signed authorization of services to be performed pursuant to Section 3068.1(a) CC.
 - 1) The operator shall not attempt to take possession of a vehicle in order to establish a lien for any non-towing services performed, or initiated and subsequently canceled.
- F. Nothing shall prohibit a Class B, C, or D operator from maintaining a place on a lighter class rotation tow list, provided the tow truck meets the equipment specifications for that class of operation.
 - 1) Regardless of the class of tow truck utilized or responding to the call, charges shall not be more than for the class of vehicle towed or serviced.
- G. Area commanders may establish local policy which allows an operator to dispatch more than one tow truck to a multiple vehicle collision scene in response to a rotation tow call.

- H. If two or more operators are called to the same incident, distribution of the vehicles shall be at the discretion of the CHP Incident Commander.
- I. When an operator will be temporarily unavailable to provide services due to a pre-planned or scheduled activity, the operator shall notify the Area command at least 24 hours prior to the date that services will be unavailable, noting the times and dates of the unavailability.
- J. Only tow truck personnel and equipment requested shall respond to a CHP call (e.g., tow truck driver bringing girlfriend, children, or their dog, is not allowed).
 - 1) Exception would be responding a tow truck driver trainee with an approved rotation tow truck driver only if an approved CHP 234F, Tow Operator/Driver Information, and documentation of tow truck driver training has already been submitted for the trainee to the Area office.
- K. An operator/employee shall not respond to a CHP call assigned to another operator or re-assign a call to another tow operator, unless requested to do so by the CHP.
 - 1) Nothing would preclude the assigned operator/employee from responding to an incident to ascertain if additional assistance or equipment is required.
 - 2) There shall be no additional charge for any personnel or equipment which is not necessary to perform the required service.
- L. There may be times when the operator/employee assigned the initial call may require assistance from an additional operator/employee.
 - 1) The assigned operator/employee may, with the concurrence of the scene manager, request a specific operator for additional assistance.
 - 2) The operator/employee's request shall be routed through the CHP.
- M. There may be times when an operator/employee, who was not called to the scene, comes upon a collision scene where a vehicle or vehicles are blocking a roadway and the on-scene officer requests assistance in clearing the roadway.
 - 1) In such a case, the operator/employee may be requested by the officer to move the vehicle to a safe location and leave it.
 - 2) There shall be no charge for this assistance and the assistance provided shall not change the operator's place in the rotation.

7. STORAGE FACILITY

- A. The operator shall be responsible for the safekeeping and prevention of vandalism of all vehicles and contents which are stored or impounded by the CHP.
 - 1) At a minimum, a securely fenced or enclosed storage area shall be provided.
- B. The primary storage facility shall be at the same location as the business address.
 - 1) This requirement may be waived by an addendum from the Area commander.
- C. Tow operators shall maintain sufficient storage spaces.
 - 1) A secondary storage facility shall only be utilized if the primary storage facility is full.
 - a) This requirement may only be waived by an addendum from the Area commander.
 - 2) Secondary storage facilities shall be located reasonably close to the main business office.
 - a) There shall be no charge to the vehicle's owner/agent for towing a vehicle from a secondary storage facility to the primary storage facility.
- D. Storage facilities owned by an operator and shared with another operator shall only be approved if the owner/operator charges for the space exclusively on a flat monthly rate rather than a vehicle-by-vehicle basis, or combination thereof.
- E. Storage facilities shared by operators, or other business establishments not owned by the operator, shall be physically separated and secured from each other.
- F. Prior to the utilization of a new storage facility, which was not listed on the CHP 234A, Rotation Tow Listing Application, the operator shall obtain the Area commander's approval.
- G. An operator's employee shall be properly trained to conduct business transactions related to towing, storage, and release of vehicles/property.
- H. Upon approval from the CHP, the operator or their employee shall release personal property from a vehicle which has been stored/impounded by the CHP at the request of the vehicle's registered owner or agent (personal property is considered to be items which are not affixed to the vehicle).

- 1) A receipt shall be provided for the removed property, with a copy placed in the stored vehicle.
 - a) This procedure shall also apply to the removal of property by the tow operator and/or their employee to a secured area within the business.
- I. The requirement to obtain approval from the CHP prior to the release or removal of property may be excused by the Area commander if it is determined proper safeguards and procedures are utilized by the operator.
 - 1) This requirement shall not be waived in cases where a vehicle has been impounded for evidence or investigation.
- J. Personal property and/or the vehicle shall be released at the primary storage facility.
 - 1) Personal property or a vehicle release from a secondary storage facility shall only be granted if it's acceptable to the vehicle's registered owner or agent.
- K. No fee shall be charged for the release of personal property during normal business hours pursuant to Section 22851(b) CVC.
 - 1) The maximum charge for a non-business hours release of a vehicle or personal property shall be one-half the hourly tow rate charged, or less, for initially towing the vehicle pursuant to Section 22851(b) CVC.
 - 2) No lien shall be attached to any personal property in or on the vehicle pursuant to Section 22851(b) CVC.
- L. The operator shall keep a written record of every vehicle stored for a period longer than 12 hours pursuant to Section 10650(a) CVC.
 - 1) The record shall contain the name and address of the person storing or requesting the tow, the names of the owner and driver of the vehicle (if ascertainable), and a brief vehicle description (make, model, license plate number, and any vehicle damage) pursuant to Section 10650(b) CVC.

8. TOW TRUCK DRIVERS

- A. The operator shall ensure tow truck drivers responding to calls initiated by the CHP are competent and have completed a Tow Service Agreement Advisory Committee (TSAAC) approved tow truck driver training program within the past five (5) years.

- 1) The TSAAC approved tow truck driver training course list is contained in Attachment A of this TSA.
 - a) Acceptable tow truck driver training programs shall be approved by the TSAAC.
- 2) Documentation of a completed tow truck driver training program shall be submitted along with the CHP 234F, Tow Operator/Driver Information.
 - a) Tow truck driver training documentation should be for the appropriate class of tow truck (e.g., a Class D driver should have heavy duty tow driver's training documentation).
 - b) An operator shall be provided with written notification regarding the reason(s) for denial of an operator/driver's CHP 234F within 30 days.
- B. Completion and/or documentation of a tow truck driver's training does not indicate a sufficient level of competence.
- C. Tow truck drivers shall perform all towing and recovery operations in the safest and most expedient manner possible.
- D. Tow truck drivers shall be at least 18 years of age and shall possess the proper class of license and endorsements for the towed and towing vehicle.
- E. All tow truck drivers and owner/operators shall be enrolled in the Employer Pull Notice (EPN) program.
 - 1) The operator shall provide a current list of drivers and a copy of the current EPN report, or in the case of a newly hired tow truck driver, proof of enrollment in the EPN program, for all drivers to the Area office during enrollment.
 - 2) Upon the addition of new drivers, an operator shall be granted a maximum of 30 days to enroll drivers in the EPN.
 - 3) The EPN shall be kept on file, signed, and dated by the operator.
- F. The operator shall maintain a current list of drivers.
- G. Uniforms: CHP rotation tow truck drivers shall wear an identifiable uniform (either shirt and pants, or coveralls) displaying the company and driver's name while engaged in CHP rotation tow operations.

- H. Personal Appearance: CHP rotation tow truck drivers shall represent a professional image. An unacceptable representation would include: unbathed, excessively dirty/torn uniform, body art, visible body piercing, etc.
- I. Safety Garments: CHP rotation tow truck drivers **shall** wear appropriate warning garments (e.g., vests, jackets, shirts, retroreflective clothing) for daylight and hours of darkness in accordance with California Code of Regulations, Title 8, Section 1598. If the tow truck driver is working on a Federal-aid highway, the operator **shall** comply with the guidelines contained in the Federal Code of Regulations, Title 23, Highways, Chapter 1, Federal Highway Administration, Department of Transportation, Part 634, Worker Visibility, and Manual on Uniform Traffic Control Devices, Section 6D.03, Worker Safety Considerations, which requires high-visibility personal protective safety clothing to be worn that meets the Performance Class 2 or 3 requirements of the ANSI/ISEA 107-2004 (compliance date of November 24, 2008).

9. TOW TRUCK CLASSIFICATIONS

- A. An operator shall equip and maintain tow trucks covered under the TSA in accordance with the provisions set forth in the California Vehicle Code (CVC), Title 13 of the California Code of Regulations (Title 13), the specifications contained in this TSA, and in a manner consistent with industry standards and practices.
- B. All tow trucks shall have recovery and wheel lift capabilities meeting the specifications contained in this TSA and the most recent electronic version of the CHP 234B, Tow Truck Inspection Guide.
 - 1) Class D tow trucks used exclusively for salvage and recovery operations are not required to possess wheel lift capabilities.
 - 2) An operator who has a car carrier is exempted from the recovery, wheel lift, and boom capability requirements. However, the car carrier must be an additional unit and **shall not be used for recovery**.
- C. A violation of the gross vehicle weight rating (GVWR) and/or safe loading requirements of a tow truck should be cause for immediate suspension. This includes exceeding the tow truck's GVWR, front axle weight rating, rear axle weight rating, maximum tire weight ratings, or not maintaining 50 percent of the tow truck's unladen front axle weight on the front axle when towing.
- D. There are four (4) classes of tow trucks covered under this TSA.

1) **Class A - Light Duty**

- a) An operator should maintain a minimum of one tow truck which has a manufacturer's GVWR of at least 14,000 pounds.
 - (1) After June 30, 2006, Class A 4-wheel drive tow trucks with a GVWR of less than 14,000 pounds may be listed as special equipment on the CHP 234A, Rotation Tow Listing Application. These tow trucks shall be used only for recoveries requiring the use of 4-wheel drive.

2) **Class B - Medium Duty**

- a) An operator should maintain a minimum of one tow truck with a GVWR of at least 26,001 pounds. The truck shall be equipped with air brakes and a tractor protection valve or device, and be capable of providing and maintaining continuous air to the towed vehicle.
 - (1) All Class B tow trucks with a GVWR of less than 26,001 pounds currently approved for the CHP Class B rotation tow list will be allowed to remain on the Class B rotation tow list until June 30, 2013.
 - (2) Tow companies continuously used on rotation for the CHP, whose equipment was previously approved and owned by the same operator but lacks air brakes, and/or a tractor protection valve or device, may apply for and receive a Class B rotation tow listing if the tow truck is capable of supplying service brake air to the towed vehicle and has a single control for application. This tow truck will be allowed to remain on the Class B rotation list until June 30, 2012.

3) **Class C - Heavy Duty**

- a) An operator should maintain at least one three-axle tow truck with a GVWR of at least 48,000 pounds. The truck shall be equipped with air brakes and must be capable of providing and maintaining continuous air to the towed vehicle.
 - (1) All Class C tow trucks with a GVWR of less than 48,000 pounds currently approved for the CHP Class C rotation

tow list will be allowed to remain on the Class C rotation tow list until June 30, 2012.

4) **Class D - Super Heavy Duty**

- a) An operator should maintain at least one three-axle tow truck with a GVWR of at least 52,000 pounds. The truck shall be equipped with air brakes and must be capable of providing and maintaining continuous air to the towed vehicle.
 - (1) All Class D tow trucks with a GVWR of less than 52,000 pounds currently approved for the CHP Class D rotation tow list will be allowed to remain on the Class D rotation tow list until June 30, 2012.
 - (2) If this class of tow truck is used exclusively for salvage and recovery operations, there is no requirement for providing and maintaining continuous air to the towed vehicle.

10. GENERAL EQUIPMENT SPECIFICATIONS

- A. Tow Truck and Car Carrier Classifications: Tow truck and car carrier classifications are based on the truck chassis GVWR and the classification system used by the American Trucking Association (ATA) and truck manufacturers. Tow truck and car carrier classifications shall meet all applicable state and/or federal standards.
- B. Identification Labels: Each piece of towing equipment shall have a label or identification tag permanently affixed to the equipment in a prominent location to identify the manufacturer, serial number, model, and rated capacity.
- C. Recovery Equipment Rating: The basic performance rating of the recovery equipment is the weight the equipment can lift in a winching mode, when the boom is static at a 30 degree elevation with the load lines vertical and the lifting cables sharing the load equally, measured with a live load (weight or load cell).
 - 1) The structural design of the recovery equipment must have a higher load capacity than the performance ratings.
 - 2) Winches shall conform to or exceed the specifications set forth by the Recovery Equipment Rating, Society of Automotive Engineers (SAE) Handbook, SAE J706.
 - 3) All ratings for cable and chain assemblies are for the undamaged assembly condition. All cable and chain assemblies should be the same type,

construction, and rating as specified by the original equipment manufacturer (OEM) for the equipment.

- D. Control/Safety Labels: All controls shall be clearly marked to indicate proper operation, as well as any special warnings or cautions.

11. INSPECTIONS

- A. The CHP shall provide for not less than one annual inspection of all tow trucks utilized on CHP rotation calls, at no charge to the operator.
 - 1) The CHP may conduct additional inspections without notice during normal business hours.
- B. The operator shall not dispatch any tow truck which has not been inspected and approved by the CHP.
 - 1) The CHP shall inspect a tow truck within thirty (30) days of a request from an operator.
- C. The annual inspection shall consist of the following:
 - 1) A Level One inspection (CHP 407F, Safetynet Driver/Vehicle Inspection Report) conducted by a commercial enforcement officer or Area tow officer with the assistance of a motor carrier specialist or commercial vehicle inspection specialist.
 - 2) A tow truck inspection (CHP 234B, Tow Truck Inspection Guide) conducted by a commercial enforcement officer or Area tow officer.
- D. Upon the successful completion of a Level One inspection, a Commercial Vehicle Safety Alliance (CVSA) decal shall be issued, regardless of the tow truck inspection (CHP 234B) results.
- E. If 70 percent or more of the operator's tow trucks fail the initial annual inspection, the operator's application shall be denied and the operator may reapply during the next open enrollment period.
- F. The operator whose tow trucks have successfully passed the initial annual inspection, but still have some tow trucks which failed, shall be allowed one re-inspection for those failed tow trucks.
- G. The operator shall be provided with written notification of the failure/denial of any tow truck or equipment and allowed a hearing upon request to the Area office.

- H. An Area office should honor annual inspections performed by another Area office.
- I. All of the equipment listed on an operator's CHP 234A, Rotation Tow Listing Application, shall be accounted for during the annual inspection.
 - 1) It will be the Area commander's discretion to honor a Level One Inspection from a CHP Inspection Facility conducted within 30 days of the inspection date and presentation of the completed CHP 407F.
- J. Special Equipment
 - 1) To properly and safely tow, service, or recover the wide variety of vehicles being operated on the highway, a towing procedure may require the use of special equipment specifically designed for the purpose. This special equipment shall be listed on the operator's CHP 234A, Rotation Tow Listing Application, and should be used when appropriate.
 - 2) All special equipment listed on the CHP 234A shall be accounted for during the annual inspection or when additional equipment is added.
 - 3) Any special equipment which requires certification/inspection of the equipment and/or operator (e.g., cranes, forklifts), the applicable and current certification/inspection document(s) shall be provided to the Area office at the time of enrollment or as equipment is added by an operator.

12. RATES

- A. Fees charged for calls originating from the CHP shall be reasonable, valid, and not in excess of those rates charged for similar services provided in response to requests initiated by a public agency or private person.
 - 1) Reasonableness shall be determined as compared to other similar service rates.
 - 2) Validity shall be based upon the following: telephone quotes, invoices, posted rates, charges to retail customers, etc.

NOTE: Element 12.A, shall not apply if the operator responds to a CHP call in a location where towing rates for all tow companies are established by an Official Police Garage (OPG) or city/county ordinance pursuant to Section 21100(g)(1) CVC.

- B. Based upon the average of the proposed fees submitted, the Area commander shall determine the reasonableness and validity of all submitted rates (i.e., storage, non-skilled labor, special equipment).
- C. An operator who submits a rate, which is determined by the Area commander to be unreasonable and/or invalid, shall be allowed to re-submit rates only once.
 - 1) If the re-submitted rate is unreasonable and/or invalid, the operator shall be disqualified until the next enrollment period.
 - 2) An operator shall be provided with written notification regarding the disqualification within 30 days.
- D. Rate requirements represent the maximum an operator may charge on a CHP call.
 - 1) An operator is not precluded from charging less when deemed appropriate by the operator.
 - 2) These requirements shall not be construed as requiring a charge if an operator would not normally charge for such service.
- E. Any operator who charges rates above the submitted rates for a CHP call shall be subject to disciplinary action.
- F. In an effort to remain competitive in the open market, the operator may lower retail rates at any time by notifying the CHP.
 - 1) When an operator lowers the retail rate, that retail rate becomes the operator's new approved rate.
- G. A valid bank credit card or cash payment shall be accepted for payment of storage and/or towing when a vehicle is stored pursuant to Section 22651 CVC (Section 22651.1 CVC).
- H. No operator or employee shall refer to any rate as a required or "CHP Rate."
- I. The approved schedule of rates charged by the operator shall be available in the tow truck, and shall be presented upon demand to the vehicle owner/agent for whom the tow service was provided or any CHP officer at the scene.
- J. There shall be no additional charge for moving (i.e., driving, towing, pushing, utilizing a forklift) a stored vehicle from inside an operator's storage yard to the front of the business establishment.
- K. Operators may only raise rates during the enrollment period or upon approval after a midterm review.

L. Tow Rates

- 1) The rate for towing should be computed from portal to portal when a vehicle is towed to the operator's storage yard.
 - a) Portal to portal is defined as follows: Time shall start from either the point of dispatch or upon departure from the place of business, whichever is closer to the location of the call, and shall end at the estimated time of return to the place of business; or completion of the call if another call is pending; whichever is shorter.
- 2) The time expended, for towing a vehicle back to the operator's storage yard, should be charged at a rate not to exceed the hourly rate.
 - a) Time expended in excess of the hourly rate shall be calculated in no more than one-minute increments.
 - b) There shall be no additional charges for mileage, etc.
- 3) The operator may submit two retail hourly tow rates to the Area: One rate for calls originating during normal business hours and one rate for calls originating after business hours.
- 4) The operator shall base towing charges upon the class of vehicle being towed, regardless of the class of truck used.

M. Service Call

- 1) The operator may charge up to a 30 minute minimum per call for any service which is performed when the vehicle operator or agent is present and the vehicle is not stored at the direction of an officer or returned to the operator's storage yard.
- 2) Rates for a service call (out-of-gas, lockouts, tire changes, etc.) should be from portal to end of service.
- 3) Charges, in excess of a 30-minute service call, may be charged in no more than one-minute increments.
- 4) Fuel charges for gasoline dispensed on out-of-gas service calls shall be at the prevailing market rate.

N. Fees for Special Operations

- 1) Fees shall be reasonable and consistent with industry standards for similar operations.

- 2) Operators involved in the two (2) tow truck Salvage and Recovery list may charge a minimum two-hour rate.
 - a) Time expended in excess of the two-hour minimum shall be at the hourly rate in no more than one-minute increments.
 - b) If it is determined that only one truck is required, the second truck may claim portal to portal and time expended on scene until determination was made that it was not required.
- 3) Hourly rates shall be established for the following:
 - a) Auxiliary and contracted equipment, e.g., airbags, converter gear/dolly, additional trailers, fork lift, front loaders.
- 4) Operators shall submit a mark-up rate (percentage of the cost to the operator) for rental equipment and labor not otherwise listed on the CHP 234A, Rotation Tow Listing Application.
- 5) If an operator performs a service for which a required rate was not submitted and approved by the Area, the operator shall only be entitled to charge for the actual cost of that service plus a markup rate not to exceed ten (10) percent.

O. Storage Fees

- 1) A vehicle stored 24 hours or less shall not be charged more than one day of storage pursuant to Section 3068.1(a) CC.
 - a) If the vehicle is released from storage after 24 hours has lapsed, charges may be allowed on a full, calendar-day basis for each day of storage, or part thereof pursuant to Section 3068.1(a) CC .
- 2) Storage of vehicles in combination should be charged a per vehicle rate except for dollies, con-gear, vehicle on a car carrier/trailer, etc.
 - a) Dollies and con-gear, not in combination, may be charged a storage rate not to exceed Class A storage fees.
- 3) Inside storage fees shall only be charged when inside storage is requested by the CHP, registered owner, legal owner, insurance company, or when the inside storage can be justified by the tow operator.
- 4) The operator shall display in plain view at all cashiers stations, a sign as described in Section 3070(d)(2)(E) CC, disclosing all storage fees and charges in force, including the maximum storage rate.

13. COLLUSION

- A. An operator and/or applicant shall not conspire, attempt to conspire, or commit any other act of collusion with any other operator or applicant for the purpose of secretly, or otherwise, establishing an understanding regarding rates or conditions to the TSA that would bring about any unfair condition which could be prejudicial to the CHP, the motoring public, or other operators.
- B. A finding by the CHP that any operator or applicant has been involved in collusion shall be cause for denial of an application or shall nullify the TSA.
- C. An operator or applicant found to be involved in any act, or attempted act of collusion, shall be disqualified from participation on all CHP rotation tow lists for the current term, plus three years.

14. INSURANCE

- A. The operator shall maintain the following minimum levels of insurance from an insurance carrier admitted in California, or admitted in the state in which the operator's business is located, and is authorized to do business in California:
 - 1) Minimum Level of Financial Responsibility (as required by Section 34631.5 CVC) - Bodily injury and property damage with a combined single limit of not less than \$750,000 for Class A tow trucks. The combined limits for Classes B, C, and D shall not be less than \$1,000,000. These minimum standards are to include non-owned and hired auto coverage.
 - 2) Uninsured Motorist - Legal minimum, combined single limit.
 - 3) On-Hook Coverage/Cargo - Insuring the vehicle in tow with limits based on the size of the tow truck.
 - a) Class A tow truck.....\$50,000
 - b) Class B tow truck.....\$100,000
 - c) Class C tow truck.....\$200,000
 - d) Class D tow truck.....\$250,000
 - 4) Garage Liability - Includes premises and operations. Coverage for bodily injury and property damage with a combined single limit of not less than \$500,000.

- 5) Garage Keeper's Liability – Shall be the same minimum as on-hook coverage for vehicles in the care, custody, and control of the operator in the storage yard.
- B. An operator shall provide proof of insurance for all storage facilities listed on the CHP 234A, Rotation Tow Listing Application.
- C. Proof of insurance shall be in the form of a certificate of insurance. The operator's insurance policy shall provide for not less than 30 days written notice to the CHP in the event the insurance policy is canceled or is due to expire.
- D. Failure of the operator to maintain the minimum insurance requirements set forth in the TSA shall immediately nullify the TSA, removes the operator from the rotation tow list, and be subject to disciplinary action by the Area commander.

15. ANNUAL OPEN ENROLLMENT/MEETINGS

- A. The Area commander shall conduct, at a minimum, one (1) annual open enrollment meeting to discuss the forthcoming TSA term and issues concerning the rotation tow program.
 - 1) The CHP shall give the operator a 30-day written notice of the meeting.
 - 2) If an operator or operator's designee fails to attend the annual open enrollment meeting, the operator's application for the forthcoming TSA term shall be denied.
 - a) The operator shall be provided with written notification of the denial and may re-apply during the next open enrollment.
- B. Any subsequent meetings shall be mandatory for the operator or operator's designee.
 - 1) The CHP shall give a 30-day written notice, if practical, of the meeting.
 - 2) Failure to attend a meeting shall result in disciplinary action.

16. DEMEANOR AND CONDUCT

- A. While involved in CHP rotation tow operations or related business, the tow operator and/or employee(s) shall refrain from any acts of misconduct including, but not limited to, any of the following:
 - 1) Rude or discourteous behavior.

- 2) Lack of service, selective service, or refusal to provide service which the operator is capable of performing.
- 3) Any act of sexual harassment or sexual impropriety.
- 4) Unsafe driving practices.
- 5) Exhibiting any objective symptoms of alcohol or drug use.
 - a) The operator/tow truck driver shall submit to a preliminary alcohol screening test upon demand of the CHP if an odor of an alcoholic beverage is detected upon their person.

17. TOW COMPLAINTS

- A. All CHP related tow service complaints received or initiated by the CHP against a tow operator or tow operator's employees, shall be accepted and investigated in a fair and impartial manner.
 - 1) The tow operator and their employees shall cooperate with CHP investigators during the course of an investigation.
- B. The operator shall be notified in writing of the findings within 30-days of the conclusion of any investigation.
- C. Should the filing of criminal charges be a possibility, the CHP shall conduct the investigation to conclusion or assist the lead investigating agency and request prosecution if warranted.
- D. Complaints for violations of the law not normally investigated by CHP shall be referred to the agency with investigation jurisdiction.
- E. Alleged violations of the TSA shall be investigated by the CHP Area covered by the TSA.

18. COMPLIANCE WITH LAW

- A. The tow operator and employees shall, at all times, comply with federal, state, and local laws and ordinances.
- B. Any conviction of the operator or employee involving a stolen or embezzled vehicle, fraud related to the towing business, stolen or embezzled property, a crime of violence, a drug-related offense, felony driving while under the influence of alcohol or drugs, misdemeanor driving while under the influence of alcohol or drugs, or moral turpitude should be cause for suspension or removal of an

operator/employee, or denial of an operator/employee's application, or termination of the TSA.

- C. CHP personnel, as well as tow operators and their employees, shall not be offered nor accept gratuities pursuant to Section 12110(a) CVC.
- D. No tow operator or their employees shall accept any gratuities from a repair shop for the delivery of a vehicle, not owned by the repair shop or tow company, for the purpose of storage or repair pursuant to Section 12110(c) CVC.
- E. An operator shall satisfy a court order mandating reimbursement to the vehicle or property owner for the damage or loss which occurred while the vehicle was in the operator's custody.
- F. An operator or employee arrested/charged for a violation involving any of the above crimes should be suspended until the case is adjudicated.

19. COMPLIANCE WITH TSA

- A. The operator agrees, as a condition of inclusion in the rotation tow program, to comply with the terms and conditions of the TSA. Furthermore, the operator or operator's agent agrees that failure to comply with these terms and conditions shall be cause for disciplinary action (i.e., written reprimand, suspension, termination, or denial of an application).
- B. A violation of the equipment requirements, related to safety, shall be cause for immediate suspension.
 - 1) The suspension shall remain in effect until the suspension period is completed and the CHP has inspected the equipment and concluded the operator is in compliance.
- C. A violation of the GVWR and/or safe loading requirements of a tow truck may be cause for disciplinary action.
 - 1) This includes exceeding the tow truck's GVWR, FAWR, RAWR, maximum tire weight ratings, or not maintaining 50 percent of the tow truck's laden front axle weight on the front axle when in tow.
- D. A violation of intentionally overcharging or a pattern of overcharging shall be cause for suspension.
 - 1) The suspension shall remain in effect until the suspension period is completed and proof of reimbursement to the aggrieved customer has been provided to the CHP.

- E. Any unsatisfactory terminal evaluation rating issued by the Motor Carrier Safety Unit (MCSU) shall be cause for suspension.
 - 1) The suspension shall remain in effect until proof of a satisfactory compliance rating from the MCSU has been provided to the Area commander.
- F. Allowing an incompetent tow truck driver to respond to a CHP call shall be cause for disciplinary action of the operator.
- G. An operator responding a tow truck driver to a CHP call (i.e., those drivers dispatched by the tow operator's business) for whom the following information has not been submitted and approved by the Area office, shall be cause for disciplinary action of the operator:
 - 1) A CHP 234F, Tow Operator/Driver Information, which shall include all convictions of felonies and misdemeanors.
 - a) Effective January 1, 2011, any new operator or tow truck driver shall be fingerprinted in accordance to Element 3. Tow Operators, Item F.
 - 2) Documentation indicating completion of a TSAAC approved tow truck driver training program within the past five (5) years.
 - 3) Enrollment in an annual random drug testing program and Employer Pull Notice program.
- H. Tow operators shall not record (i.e., videotape, photograph) a scene unless it is for official use by the tow company for business related reasons.
 - 1) The on-scene investigating officer or incident commander shall make the determination when a tow operator may record a scene for tow related business reasons.
 - 2) In the event a tow operator is determined to be in violation of this provision, they will immediately surrender any such recording device to an officer of the California Highway Patrol.

20. DISCIPLINARY ACTION

- A. The Area commander shall take disciplinary action against an operator for violations investigated and sustained. Furthermore, the operator agrees that failure by the operator, or their agent, to comply with these terms and conditions

shall be cause for disciplinary action (i.e., written reprimand, suspension, denial of an application, or termination from the CHP Rotation Tow Program).

- 1) The Area commander shall retain discretion regarding the length of any suspension imposed pursuant to the terms and conditions of this TSA.
- B. Nothing shall preclude the CHP from taking the appropriate enforcement or administrative action for any violations of law.
- C. Nothing herein shall be deemed to prohibit the CHP from immediately suspending, terminating, or denying an application of any operator or employee whose conduct, in the opinion of the Area commander, is deemed to be a danger to the motoring public, or who has engaged in conduct constituting a flagrant violation of the TSA (e.g., registered sex offender).
- D. Records of violations shall be retained by the CHP for 36 months.
- E. Disciplinary action taken against an operator by an Area commander should be honored by all CHP Areas being serviced by the operator in question.

21. TERMS OF DISCIPLINARY ACTION

- A. Violations of the terms and conditions of the TSA may be cause for disciplinary action in the following manner:

- 1) First violation within a 12 month period – letter of written reprimand.
- 2) Second violation within a 12 month period – 1 to 30-day suspension.
- 3) Third violation within a 12 month period – 60 to 90-day suspension.
- 4) Fourth violation within a 12 month period – termination of the TSA.

NOTE: In lieu of termination, the CHP may impose additional suspensions for longer periods, if deemed appropriate.

- B. Violations of the terms and conditions of the TSA which warrant suspension for the first violation are categorized as major violations. Any subsequent or continuing major violation may be cause for termination.
 - 1) When considering disciplinary action for a major violation of the TSA, an Area commander should take into consideration all violations which have occurred within 36 months prior to the date of the current violation.

- C. A suspended or terminated operator, and/or the tow business owner at the time of the suspension or termination, shall not be eligible for a rotation listing for the duration of the suspension or termination.
 - 1) This provision applies to the operator working in any capacity within any tow business or operating any tow business, even if operated under new ownership.
- D. If the operator is serving a suspension for one year or more, the operator shall be required to have complied with all terms and conditions of the current TSA at the time of reinstatement.
- E. An operator shall comply with all the terms of the suspension (i.e., restitution to victims, court orders) prior to reinstatement or re-application.

22. HEARING/APPEAL

- A. A hearing shall be granted, upon an operator's request, within ten (10) calendar days, for any of the following circumstances:
 - 1) Operator is served with disciplinary action.
 - 2) Denial of an operator's rotation tow application (CHP 234A, Rotation Tow Listing Application) or an operator/driver application (CHP 234F, Tow Operator/Driver Information).
- B. A hearing shall be held as soon as practicable.
- C. The hearing shall be conducted by the Area commander or designee, and the operator shall be entitled to present all relevant facts and circumstances in support of the operator's position.
 - 1) The operator shall be entitled to present testimony of at least one qualified person.
- D. The operator shall be notified in writing of the Area commander's decision(s) within ten (10) business days of the date of completion of the hearing.
- E. Following a hearing, if the operator is dissatisfied with the Area commander's decision(s), the operator may appeal by submitting a written request to the CHP Division commander within ten (10) calendar days.
- F. The appeal shall be conducted by the Division commander or designee and shall be held as soon as practicable.
 - 1) The operator shall have the same rights as afforded at the Area level.

- 2) The operator shall be notified in writing of the Division commander's decision(s) within ten (10) business days of the appeal.
 - 3) The Division commander's decision(s) shall be subject to no further administrative appeal.
- G. Disciplinary action shall not take effect until the hearing and appeal process has been exhausted, with the exception of operators whose conduct is deemed to be a danger to the motoring public or who continue to violate the terms and conditions of this TSA.
- H. If an operator fails to request a hearing or appeal within the specified time or fails to appear at a scheduled hearing or appeal, the action taken by the CHP Area commander shall be final and the disciplinary action shall take effect upon written notification to the operator by the Area commander.

23. MIDTERM REVIEW

- A. The purpose of this section is to provide a process for a midterm review of the terms and conditions of the TSA in the event there is a legitimate and substantial change in conditions or law affecting the majority of the operators within an Area or the CHP.
- B. A midterm review, when granted by the Commissioner or designee, will not automatically authorize a change in the terms and conditions of the TSA.
 - 1) If a midterm review is announced by the Commissioner or designee, it is the responsibility of the affected Area commander to conduct a review of the conditions which initially caused the request to be communicated and to determine if the change is justified.

24. ADVERTISING

The operator shall not display any sign or engage in any advertisement indicating an official or unofficial connection with the CHP or the Department of Motor Vehicles.

25. CANCELLATION

This TSA may be canceled by either party by giving written notice to the other party.

26. OPERATOR APPROVAL

I certify that all drivers operating under this Tow Service Agreement (TSA) are qualified and competent. I further certify that I have read and understand this TSA and agree to abide by all the provisions. I further agree to indemnify, defend, and save harmless the state, its officers, agents, and employees from any and all claims and losses accruing or resulting to the operator in connection with the performance of the TSA, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the operator in the performance of this TSA. The operator, and the agents and employees of the operator, in the performance of this TSA, shall act in an independent capacity and not as officers or employees or agents of the State of California. The terms of this TSA (2011 TSA) will become effective:

January 1, 2011 and end June 30, 2011.
Date Date

Operator Approval		
Signature	Typed Name	
Company	Title	Date
Business Address		Phone Number
Motor Carrier Permit Number		

ATTACHMENT A

TOW SERVICE AGREEMENT ADVISORY COMMITTEE APPROVED TOW TRUCK DRIVER TRAINING COURSES

Automobile Club of Southern California
3333 Fairview Road
Costa Mesa, CA 92626
Contact: Rob Wade at (714) 885-1333
E-mail: wade.robert@caaa-calif.com

California Tow Truck Association
3001 E. Tahquitz Canyon Way, Suite 108
Palm Springs, CA 92262-6900
Contact: Jack Morris at (800) 874-2860 or (760) 325-5840, Extension 116
E-mail: jmorris@ctta.com

California State Automobile Association
Automotive Services
150 Van Ness Avenue
San Francisco, CA 94102-5279
Contact: Ben Sims at (415) 565-4373

Randy Resch
Randy Resch Training
21020 Fog Ridge
Alpine, CA 91901
Telephone: (619) 807-3177
E-mail: reschran@aol.com

Tow Pros, LLC
4615 East Brundage Lane
Bakersfield, CA 93307
Contact: Ken Kay at (661) 979-0747
E-mail: kktowman@towpros.com

Towing & Recovery Association of America (Correspondence Course)
2121 Eisenhower Avenue, Suite 200
Alexandria, VA. 22314
Telephone: (800) 728-0136
E-mail: towserver@aol.com

WreckMaster Incorporated
P.O. Box 473
Lewiston, NY 14092
Telephone: (800) 267-2266
E-mail: www.WreckMaster.com